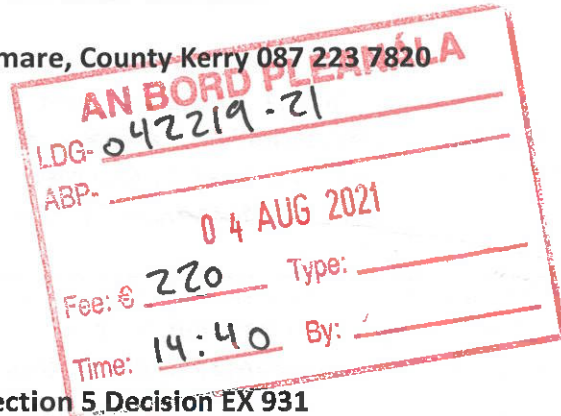


Martin Arthur

Lime Kiln Lodge, Market Street, Kenmare, County Kerry 087 223 7820

Friday the 30th of July 2021

The Secretary
An Bord Pleanála
64, Marlborough Street,
Dublin 1



Ref: Kerry County Council Planning Authority - Section 5 Decision EX 931
Homely Developments Limited and KPK Properties Limited
Re: Lands at Reenagappul, Kenmare, County Kerry

Dear Sir or Madame,

I refer to the above matter.

A Section 5 referral, [See Exhibit 1] was received by the Kerry County Council Planning Authority (KCCPA) on the 11th of June 2021 and a decision from them was due on the 8th of July 2021. I provided further unsolicited information on the 28th of June 2021.

The Question I asked is as follows:

"Is the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, County Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development?"

Kerry County Council has failed to deliver their decision within the statutory time period, hence this appeal.

On the 7th of July 2021 KCCPA sent out a letter to the owner/occupiers, [See Exhibit 2] seeking further information. I enquired of the KCCPA if there was a time limit for the developer to respond to their letter. I was told that there was no time limit. The developer, as of today, has not responded to the KCCPA. As my time limit to appeal to the board is fast expiring, I have no choice but to lodge my ABP appeal.

The development, adjacent to an SAC, is currently being investigated as an unauthorized development under KCCPA enforcement case reference No: 8097, dated the 17th of May 2020.

The owner occupiers are involved in quarrying business and excavated stone has been removed from their lands and processing has taken place. There is plant and machinery normally associated with a quarrying operation on the lands.

Thousands of tons of stone removed from the unauthorized quarry was sold to the Kerry County Council Housing Authority from Jan 2020 until May 2020 for a social housing development at Gortamullen, Kenmare, a full four months before the KCC PA served an enforcement notice on the owner occupiers in May 2020, on foot of a letter from my Solicitor that is contained in the enforcement file dated the 24th of January 2020..

Quarrying activity commenced in December 2019 and has continued on the subject lands to the present day. Stone has and is being processed and removed on a regular basis by the owner/occupiers as evidenced in our further information email to the KCC PA dated the 28th of June 2021 [See Exhibit 3]

I trust that this appeal is in order; the requisite fee of €220 is attached.

I shall await hearing from you in due course.

Regards,

Martin Arthur

Martin Arthur

Lime Kiln Lodge, Market Street, Kenmare, County Kerry 087 223 7820

Thursday the 6th of June 2021

The Secretary
Kerry County Council Planning Authority
County Buildings
Tralee
County Kerry

Ref: Section 5 Declaration Application - Homely Developments Ltd and KPK Properties Limited
Re: Lands at Reenagappul, Kenmare, County Kerry

Dear Sir or Madame,

The above matter refers.

This is a Section 5 Declaration Application on the following grounds:

Because of concerns I had following a recent conversation with your enforcement officer, I took the opportunity to contact the Department of Agriculture, Fisheries and the Marine (DAFM) directly.

The DAFM informed me that no such application for consent to re-contour lands was lodged by Homely Developments Ltd or KPK Properties Limited nor granted. Based on the nature of works being undertaken and the location of the subject site adjacent to an SAC, the DAFM is saying that a full EIA would have been required prior to consent being applied for. Considering the fact that no application was lodged with the DAFM by Homely Developments Ltd and KPK Properties Limited and that the extent of works exceed 2ha the Planning Authority should have cross-reported the works in the first instance to the DAFM particularly considering the works were likely to impact on the conservation status of a European designate Site (Kenmare River SAC.) The local authority should have been concerned about the potential risks to the adjacent SAC. A key objective of the county development plan is the conservation and protection of natural heritage of the county including semi-natural habitats and designated sites (including SACs).

The ongoing works cannot be exempted development because the works are impacting on the conservation interest of Kenmare River SAC. The SAC is located directly adjacent to the subject site. The SAC is designated for the protection of Lesser Horseshoe Bat, which are known to occur in the area. Lesser Horseshoe Bats are known to forage throughout wooded habitat in the area (scrub, hedgerows, and woodland). The works appear to have caused the loss of wooded habitat that would have been of value to Lesser Horseshoe Bat. Furthermore the extent of bare soil and exposed rock presents a risk to water quality within the adjacent SAC which is designed for a range of aquatic habitats and species. The SAC is designated for Otter,

a species that may utilise the area as commuting habitat. Works are likely to give rise to disturbance of this protected species. The works have also led to the clearance of woody vegetation throughout during the bird breeding season (1st March - 1st September). Section 40 of the Wildlife Act 1976, as amended by Section 46 of the Wildlife (Amendment) Act 2000, restricts the cutting, grubbing, burning or destruction by other means of vegetation growing on uncultivated land or in hedges or ditches during the nesting and breeding season for birds and wildlife, from 1 March to 31 August. These restrictions apply not only to private land-users but also to local authorities, public bodies and to contractors. The works do not come in under any exemption provided for by the act.

I am told that the local authority was obliged to cross-report to the DAFM where they believed that a farmer was in breach of cross-compliance requirements*. There were potential cross-compliance breaches based on the extent of works being undertaken and the associated environmental risks.

If the Planning Authority had cross – reported my concerns that I raised in my Section 5 application (Ref: EX 918) to the DAFM they would have learned that the works would have been interpreted by the DAFM as re-contouring of lands BUT because the extent of works exceed 2ha an application for EIA by DAFM should have been made in advance of an application for consent by Homely Developments Ltd and KPK Properties Limited. A Natura Impact Statement and a full Environmental Impact Assessment Report should then have accompanied the application for consent. The DAFM has responsibility for EIA / AA where the works are defined as agricultural activity. The subject lands are not being claimed for basic payment from DAFM by the entities undertaking the works.

In these circumstances, I shall now submit this question for a Declaration under Section 5.

“Is the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, County Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development?”

74 WORDS

In support of my application, please find the attached four photographs, three of which are downloaded from Google Maps dated the 10th of June 2021.

I trust that this Section 5 Declaration Application is in order, the requisite fee of €80 is attached.

I shall await hearing from you in due course.

Regards,

Martin Arthur

*Cross Compliance
From Department of Agriculture, Food and the Marine

28th of June 2021

**Copy of Email to The Kerry County Council Planning Authority
Enforcement Section**

**Ref: Further information - Section 5 Declaration Application EX 931 -
Homely Developments Ltd and KPK Properties Limited Re: Lands at
Reenagappul, Kenmare, County Kerry**

Good morning Michelle,

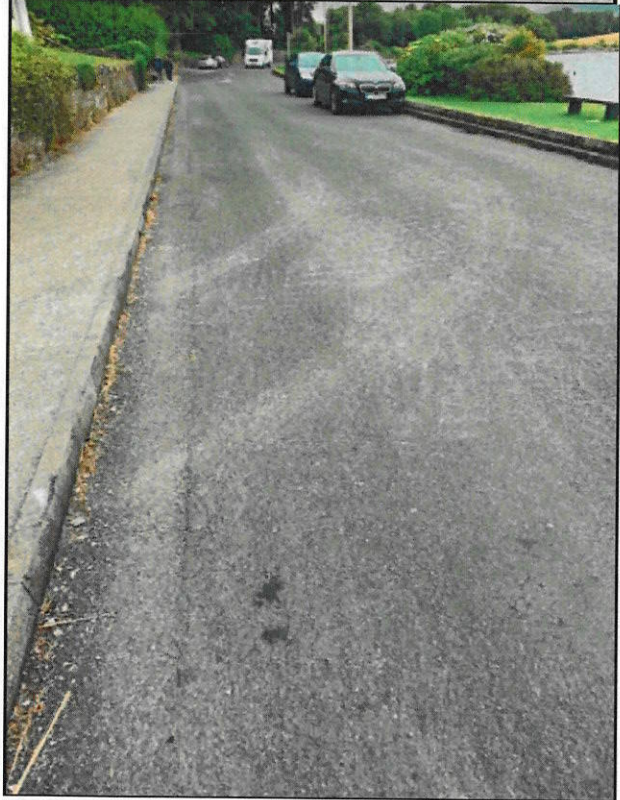
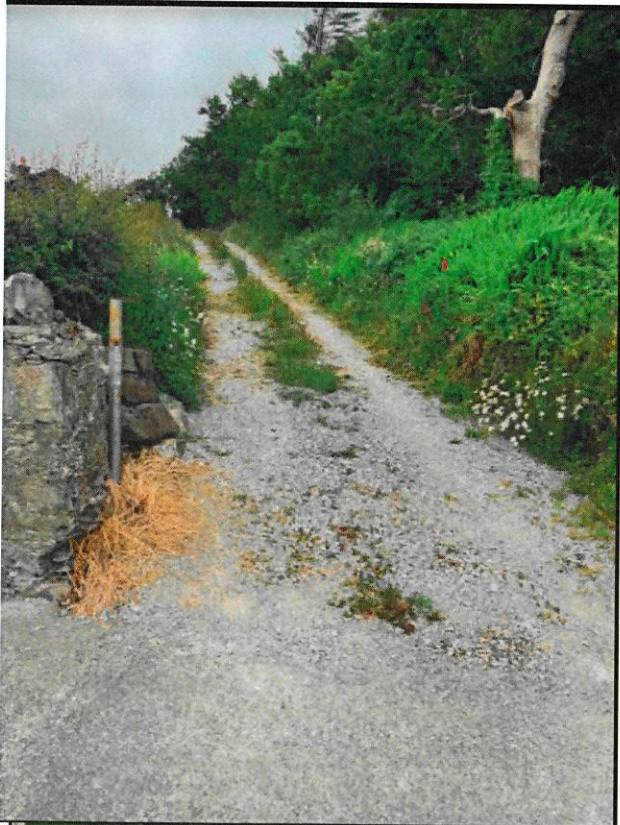
The above matter refers

Our current Section 5 question is as follows:

**“Is the stripping back and removal of all of the topsoil and trees on lands at
Reenagappul, Kenmare, County Kerry, adjacent to an SAC (Kenmare River
SAC), to create an alleged unauthorized extension of 2.75 hectare to the
existing unauthorized quarry at Reenagappul, Kenmare, and the
importation of broken stone from the alleged unauthorized 2.75 hectare
quarry extension for storage in the existing unauthorized quarry at
Reenagappul, Kenmare, development or is it exempted development?”
74 WORDS**

This photographic sequence of events was recorded on Thursday evening, the 24th of June and Friday morning, the 25th of June 2021 and it shows quarrying activity on the subject 2.75ha lands at Reenagappul, the laneway from the subject lands leading onto Pier Road, Kenmare and the transportation of stone from the subject landholding.







AN BORD PLEANÁLA

04 AUG 2021

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



I trust that this further information is in order.

I shall await hearing from you in due course.

Kind Regards,

Martin Arthur

